IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 3723 of 2007(R)

OS.492/2005 of II ADDL.SUB COURT,ERNAKULAM

.....

PETITIONER:

ROSSY ALIAS VALSA, D/O. XAVIER,
PULIKKAPARAMBIL, THRIKKANARVATTOM DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK,ERNAKULAM DIST

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.SURESH

RESPONDENTS:

---

1. E.K. THOMAS, S/O. KURUVILLA,
ELONJIKKAL HOUSE, KOTHAMANGALAM, NOW RESIDING AT
FLAT NO.8-B, HARBOUR CREST, KURISHUPALLY ROAD,
RAVIPURAM, KOCHI-15.

2. JOSEPH ALLAN, S/O. THOMAS,
PALATHURUTHIYIL HOUSE, VADUTHALA, ERNAKULAM,
NOW RESIDING AT J.M.CRESCENT, MAMANGALAM,
KOCHI-682 024.

3. SHEELA ALLEN, W/O. JOSEPH ALLEN OF
-DO- -DO-.

BY ADV. SRI.K.K.CHANDRAN PILLAI
SRI.A.S.SAJUSH PAUL
SRI.T.B.THANKAPPAN
SMT.P.V.RADHAMANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/09/2007, ALONG WITH WPC NO. 3771 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).3723/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF PLAINT IN O.S.542/05 FILED BY PETITIONER BEFORE THE SUB COURT, EKM

EXT.P2- TRUE COPY OF PLAINT IN O.S.492/05 FILED BY 1ST RESPONDENT BEFORE THE SUB COURT, EKM.

EXT.P3- TRUE COPY OF I.A.7764/06 IN O.S.492/05 FILED BY PETITIONER

EXT.P4- TRUE COPY OF ORDER IN I.A.7764/06 AND I.A.7981 SUB COURT, EKM.

(TRUE COPY)

P.A TO JUDGE

M.N.KRISNAN, J.

W.P.(C).Nos. 3723/2007 & 3771/2007

Dated this 12th day of September, 2007

JUDGMENT

Writ Petition No.3723/2007 is filed by the petitioner in I.A.7764/2006 and the other Writ Petition is filed by the plaintiff in O.S.492/2005. O.S.492/2005 is pending before the II Additional Sub Court and O.S.542/2005 is pending before the I Additional Sub Court, Eranakulam. O.S.492/2005 is filed by the plaintiff Mr.E.K.Thomas for specific performance of the agreement executed by Joseph Allen and Sheela Allen with respect to a larger extent of property. O.S.542/2005 is filed by one Rosy alias Valsa against the very same persons for specific purpose of the agreement with respect to the lesser extent of the property or in otherwise, the property alleged to be agreed to be sold to Rosy alias Valsa is also included in the sale agreement in favour of Mr.E.K.Thomas. Therefore, the question to be considered in the case is whether Joseph Allen and Sheela Allen are entitled in law to execute an agreement for sale with respect to the property for which they have already executed the agreement in favour of Rosy alias Valsa.

2. Now the writ petitioner in W.P.(C).3723/2007 moved an application for impleadment as a defendant in O.S.492/2005 filed by Mr.E.K.Thomas. Thomas also moved an application as I.A.7981/2006 for impleading Rosy alias Valsa. The Court below considered that the persons other than the parties to the agreement are not necessary parties for the disposal of the case and therefore, dismissed both these applications. In order to have a proper determination, both the case matters have to be tried jointly and alleged right claimed by the respective parties under the agreement have to be considered and a decision has to be arrived at. Therefore, the junction of Rosy alias Valsa is also necessary for a proper disposal of O.S.492/2005. In O.S.492/2005 wherein I.A.7981/2006 is filed, one Thomas Mathai is also sought to be impleaded on the basis of an agreement alleged to be executed by Joseph Allen and Sheela Allen. It is also necessary for the determination of the case otherwise his entitlement to the property cannot be resolved in the case.

3. Therefore, I find that the Court below erred in not allowing impleadment applications. Therefore, I.A.7764/2006 and I.A.7981/2006 are allowed and plaintiff therein is directed to carry out the amendment and new parties are permitted to file written statement after their impleadment in the suit.

4. Needless to say the original defendants are also entitled to file their additional written statement in support of their contentions. I also feel that this is a fit case where both the cases are to be tried by one and the same Court and therefore in order to avoid further delay, I direct O.S.492/2005 pending before the II Additional Sub Court be transferred to the I Additional Sub Court to be tried along with O.S.542/2005 and O.S.484/2001.

Both the Writ Petitions are disposed of accordingly.

M.N.KRISHNAN,
JUDGE

mrcs